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ANN BAVENDER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
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J. TODD METCALF*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

office@fhh-telcomlaw.com

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1982)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
JOHN JOSEPH SMITH*

WRITER'S DIRECT

0450

August 20, 1997

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FEDERAL BUREAU OF INVESTIGATION
DEPT. OF JUSTICE

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: MM Docket 97-122

Dear Mr. Caton:

Transmitted herewith is the original and four copies of Monticello Mountaintop Broadcasting, Inc.'s Opposition to Mass Media Bureau's Consolidated Motion to Strike.

Yours very truly,

James P. Riley

Counsel for Monticello Mountaintop Broadcasting, Inc.

JPR:deb

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 20 1997

FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF THE GOVERNMENT

In re:

GERARD A. TURRO

For Renewal of License
for FM Translator Stations
W276AQ(FM), Fort Lee, NJ, and
W232AL(FM), Pomona, NY

MONTICELLO MOUNTAINTOP
BROADCASTING, INC.

Order to Show Cause Why the Construction
Permit for FM Radio Station WJUX(FM),
Monticello, NY, Should Not Be Revoked

MM Docket No. 97-122

File Nos. BRFT-970129YC
BRFT-970129YD

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO
MASS MEDIA BUREAU'S
CONSOLIDATED MOTION TO STRIKE

James P. Riley
J. Todd Metcalf
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209
(703)812-0400

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To: The Honorable Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO
MASS MEDIA BUREAU'S
CONSOLIDATED MOTION TO STRIKE

Monticello Mountaintop Broadcasting, Inc. ("MMBI"), by counsel, hereby opposes the Consolidated Motion to Strike filed by the Mass Media Bureau ("Bureau") on August 14, 1997, in which the Bureau urges the Presiding Judge to strike the Requests for Admissions filed by MMBI on August 12, 1997, and Gerard Turro on August 8, 1997. In opposition to the Bureau's Motion, MMBI states:

1. MMBI filed its Request for Admissions on August 12 so that a timely response by the Bureau (*i.e.*, within 10 days) would be made within the discovery period, ending August 22, established by the Presiding Judge.

2. The Bureau has moved to strike MMBI's Request on an astonishing basis. The Bureau claims MMBI's Request is untimely under the terms of Section 1.246 and, for that reason, MMBI's Request must be stricken. What makes the argument astonishing is this--the Bureau's Request for Admissions directed to MMBI was filed June 6, 1997. The deadline for notices of appearance in this proceeding was May 8, 1997.¹ By applying the terms of Section 1.246(a), the Bureau's Request for Admissions by MMBI could not be filed after May 28, 1997. By its own arguments, the Bureau's Request was untimely.

3. The Bureau's June 6 Request for Admissions was filed without a motion for waiver of Section 1.246(a). MMBI accepted the Bureau's Request as being within the spirit of the Presiding Judge's statements to the parties at the prehearing conference that he "believe[s] in broad discovery[.]" and that parties should not seek rulings on discovery disputes "unless you have absolutely hit a brick wall." (Tr. 18.) With the Presiding Judge's statements in mind, and the setting by the Presiding Judge of a deadline of August 22 for "completion of all discovery" (Tr. 25), MMBI accepted that the Bureau was proceeding on the understanding that Requests for Admission were encompassed, at least for this case, within the broad

¹Section 1.221(c) requires that notices of appearance be filed within 20 days of the mailing of a designation order. The designation order in this case was released April 18, 1997. MMBI, Turro, and Universal all filed their notices on or before May 8, 1997.

characterization of discovery to be completed by August 22. It is inconceivable that the Bureau was not proceeding on that basis when it filed its Request for Admissions. If the Bureau believed then, as it argues today, that: (a) requests for admission are not in this case a part of discovery, and (b) that requests for admission could not be filed more than 20 days after the appearance deadline, then the Bureau simply scoffed at the law when it filed its Request for Admissions without a waiver request.

4. MMBI's Request for Admissions asked only for eight (8) admit or deny responses by the Bureau, and could be easily and quickly answered. Instead of responding to MMBI's Request, as MMBI did to the Bureau's June 6 Request, the Bureau has "hit a brick wall" and moved to strike MMBI's Request.² The Presiding Judge should deny the Bureau's Motion. It is untenable for the Bureau to argue that MMBI's Request violates Section 1.246 when, if that argument were true, the Bureau's June 6 Request for Admissions should never have been filed by the Bureau.

Respectfully submitted,

MONTICELLO MOUNTAIN TOP
BROADCASTING, INC.

By: 

James P. Riley
J. Todd Metcalf

of

²The Bureau's suggestion in the last sentence of paragraph 3 of its Motion to Strike that the timing of MMBI's Request is burdensome is surely fallacious. It should, if anything, be easier at this stage of the case for the Bureau to admit or deny eight statements of fact than it would have been two months ago.

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209
(703)812-0400

Its Attorneys

August 20, 1997

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing **"Monticello Mountaintop Broadcasting, Inc.'s Opposition to Mass Media Bureau's Consolidated Motion to Strike"** was sent this 20th day of August, 1997, by first class mail, postage prepaid, to the following:

The Honorable Arthur I. Steinberg*
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 228
Washington, DC 20554

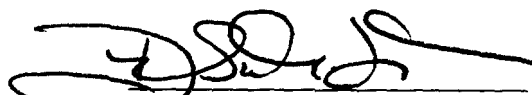
Alan Aronowitz, Esquire*
Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW, Room 7212
Washington, DC 20554

Suzan B. Friedman, Esq.*
Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, Room 7212
Washington, DC 20554

Charles R. Naftalin, Esquire
Koteen & Naftalin
1150 Connecticut Avenue, NW
Washington, DC 20036
Counsel for Gerard A. Turro

Richard A. Helmick, Esquire
Cohn and Marks
1333 New Hampshire Avenue
Suite 600
Washington, DC 20036
Counsel for Universal Broadcasting of New York, Inc.

*By Hand Delivery


Deborah N. Lunt